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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

CHAUNCEY LAWRENCE ARNOLD,

Defendant and Appellant.

G048110

(Super. Ct. No. 11NF1480)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Sheila F. Hanson, Judge. Affirmed as modified.

John F. Schuck, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric Swenson and Charles C. Ragland, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Chauncey Arnold was convicted of pimping and pandering and found to have served a prior prison term. He contends the trial court abused its discretion in sentencing him to the upper term of six years on the pimping count, but we disagree. Although the judgment must be modified to correct a clerical error, we affirm it in all other respects.

FACTS

Melissa H. had been turning tricks in the South for several years when Arnold contacted her in April 2011. Arnold got Melissa's number from "Blackpage," an online escort service site known for advertising prostitutes. He sent her a text message asking if she wanted to work for him, and when she said yes, he bought her a bus ticket, and she came out to Los Angeles.

After picking up Melissa at the bus station, Arnold brought her back to his apartment and had sex with her. He then explained how their arrangement was going to work. Melissa would refer to him as "Daddy," keep his phone number in her cell phone under the name "Brittany," and tell him whenever she got a client. She would, of course, turn over all her earnings to Arnold.

Arnold told Melissa she would be staying at the Travelodge motel in Anaheim. She was required to wake up around four o'clock every morning and proceed to an area nearby known as "the track" to ply her trade. She was expected to earn between \$500 and \$700 per day, which would be collected by Arnold the same evening or the following morning. Arnold told Melissa how much to charge for her services and required her to keep him apprised of her earnings. He also posted an advertisement for her on Blackpage, using a prepaid credit card.

Before starting to work for Arnold, Melissa made a brief trip to Florida to check in with her probation officer. When she returned to California on May 1, 2011, Arnold picked her up and took her to the Travelodge motel. Having already paid for a room there, he gave Melissa a key and told her to go to work. Over the course of the next

10 days, Melissa stayed at the Travelodge and prostituted for Arnold according to the terms set forth above.

During that time, Melissa was forced to give all of her earnings to Arnold. She also had to ask his permission for anything she needed, including feminine hygiene products, soap and clothing. One day, Melissa got ill and asked Arnold if she could go to the hospital. She said she could not “keep anything down” but Arnold’s only reply was, “Bitch eat crackers.” He refused to give her a day off because he did not believe she was making enough money for him.

On another occasion, Melissa told Arnold in a text message “I’m just over how you disrespect me.” Arnold replied, “U can go,” saying “it’s not worth the headache U giving me U free now.” Melissa responded “I’m not going anywhere.” Although Arnold never physically abused her, she was afraid he might harm her if she decided to leave.

As it turned out, the operation came to an end when Melissa solicited an undercover police officer on May 10, 2011. Upon being detained, she told the police about Arnold’s plan and the way he had treated her. When Arnold was arrested later that day, he was in possession of two cell phones, \$195 in cash, and seven prepaid credit cards. A search of his phone revealed he had been attempting to recruit various other women to work for him as prostitutes.

Anaheim Police Sergeant Craig Friesen testified about the general practices of pimps and prostitutes. He described the relationship between them as being akin to a “slave and a slave owner.” While the prostitute has to do all the work, the pimp gets all the money and largely controls the prostitute’s activities. Friesen said pimps often use degrading language toward their prostitutes and dictate when and where they must work. And they usually collect their prostitute’s earnings on a daily basis, so they can convert the cash into prepaid credit cards. According to Friesen, the rise in technology has made it easy for pimps to pay for motel rooms and post advertisements online. They can also

instantaneously communicate with their prostitutes via text messaging, if they want to. However, not all pimps operate the same. Some do things the old-fashioned way, by recruiting and talking to their prostitutes face-to-face. Friesen said there's a wide variety of ways in which pimps operate their businesses and manage their workers.

Arnold was charged with one count each of pimping and pandering. It was also alleged he had served a prior prison term. Midway through the trial, Arnold, who was free on bail, absconded, and the trial proceeded in his absence. The jury convicted Arnold as charged, and after he was taken into custody, he admitted the prior prison term allegation.

The probation report reveals the prison term arose out of Arnold's pimping activities in Las Vegas during 2004. "Through investigation, it was discovered that [Arnold] had five women, two adults and three juveniles, working as prostitutes for him. Two of the juveniles were missing persons from California." Although Arnold was charged with kidnapping in that case, he entered a plea bargain and was sentenced to three years in prison for pandering a child and conspiring to commit prostitution. The probation report also reflects Arnold was convicted of petty theft in 2001, supervising a prostitute in 2003, and pimping in 2005. In addition, he was cited for driving with a suspended license in 2009, after a prostitute accused him of refusing to turn over her suitcase, which was located in the trunk of Arnold's car.

Despite his prior record, Arnold told the probation officer he has never been involved in pimping. The probation report states, Arnold "reported in all his prior arrests for pimping he was actually selling narcotics, and claimed much of his clientele were prostitutes. He believes his prior record leads officers to believe he is involved in pimping, when he was really involved in drug sales."

At the sentencing hearing, defense counsel requested the court to impose the midterm sentence of four years on the pimping count. Counsel recited a variety of mitigating factors which she believed were applicable in this case, including that Arnold

had previously completed probation in one of his prior cases, he did not use any weapons or physically injure Melissa during the current offenses, she was a willing participant in his crimes, and he was taking parenting and substance abuse classes while in jail.

The prosecutor requested the upper term of six years, based on Arnold's record and the way he carried out his pimping operation in this case. The trial judge agreed the upper term was justified. She found, "The manner in which the crime was carried out indicates planning, sophistication and professionalism. [¶] It was the defendant who posted the ads [on] the internet to obtain the clients for the victim. He is the one who rented a hotel room so that the victim would have a location to engage in the acts of prostitution."

The judge also found "defendant's prior convictions as an adult are numerous and of increasing seriousness. [¶] I would note he has not been deterred by several prior convictions and consequences, even when it pertains to the same behavior. [¶] The court does believe these aggravating factors would outweigh any mitigating factors that are present." Speaking to Arnold directly, the judge told him "you stand before the court having done this before. I know your position is you haven't done this and this is all a mistake. The evidence in this case, however, in the court's opinion, was overwhelming; that you knowingly engaged in this conduct and this jury found that to be true. [¶] It's for those reasons, I believe, that the upper term is appropriate."

Accordingly, the trial court sentenced Arnold to six years in prison on the pimping count. It added one year for the prison prior and stayed sentence on the pandering count, making Arnold's total term of imprisonment seven years.

I

Arnold contends the trial court abused its discretion in imposing the upper term of six years on the pimping count. We disagree.

When, as here, the statute under which the defendant is convicted specifies three possible terms, the decision to impose the upper, middle or lower term rests within

the sound discretion of the court. (Pen. Code, § 1170, subd. (b); Cal. Rules of Court, rule 4.420(a).)¹ In making his selection, “the sentencing judge may consider circumstances in aggravation or mitigation, and any other factor reasonably related to the sentencing decision.” (Rule 4.420(b); see also *People v. Black* (2007) 41 Cal.4th 799, 813.) It is up to the sentencing judge to decide how much weight should be given to the pertinent circumstances. (*People v. Brown* (1988) 46 Cal.3d 432, 470.) The judge may minimize or disregard circumstances in mitigation (*People v. Lamb* (1988) 206 Cal.App.3d 397, 401) and impose the upper term based on but a single factor in aggravation (*People v. Osband* (1996) 13 Cal.4th 622, 730).

On appeal, “[t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve the legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.’ [Citation.] Concomitantly, ‘[a] decision will not be reversed merely because reasonable people might disagree. “An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.” [Citations.]’ [Citation.]” (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977-978.)

As a preliminary matter, the Attorney General claims Arnold forfeited his right to challenge the trial court’s sentencing decision by failing to object when the court announced its tentative decision to impose the upper term on the pimping count. But, leading up to the court’s tentative decision, defense counsel vehemently challenged the aggravating factors listed in the probation report and the prosecution’s sentencing brief, which advocated for the upper term. It is clear from the record that defense counsel

¹ Arnold was convicted of pimping in violation of Penal Code section 266h, subdivision (a), which provides for a sentence of three, four or six years in prison.

All further rule references are to the California Rules of Court.

opposed the upper term and wanted the court to impose the midterm instead. Although defense counsel did not raise every argument that Arnold makes on appeal, we believe the issue regarding the propriety of the upper term has been sufficiently preserved for appeal.

Turning to the merits, Arnold argues the upper term was unjustified because his actions reflected nothing more than a “run-of-the-mill” pimping operation. While the trial court found the operation reflected planning, sophistication and professionalism, which is an aggravating factor under rule 4.421(a)(8), Arnold insists that nowadays virtually all pimps use technology to advertise online and obtain motel rooms for their prostitutes to use. In fact, he goes so far as to claim these circumstances are virtually a statutory element of pimping, thus barring their use as an aggravating factor at sentencing. (See rule 4.420(d) [a “fact that is an element of the crime upon which punishment is being imposed may not be used to impose a greater term.”].)

However, the crime of pimping requires only that one, knowing the other is a prostitute, derives support in whole or part from the money made by the prostitute. (Pen. Code, § 266h, subd. (a).) Posting advertisements as a means to market one’s prostitution business and securing safe and private locations in which to conduct that business are not elements of that offense. Therefore, these facts were fair game for sentencing purposes. We agree with the trial court that they show Arnold had a relatively sophisticated business plan and went to great lengths to make his business profitable on the foundation of Melissa’s illicit activities. Certainly interstate recruitment is not part of every pimp’s repertoire.

Arnold also takes issue with the trial court’s reliance on his prior record as an aggravating circumstance. While he concedes he has several prior convictions, he suggests they are not really germane to this case because the “majority of them were prostitution-related” and three of them were misdemeanors. However, as the trial court rightly noted, the fact Arnold has previously been convicted of the same type of crimes

he was convicted of in this case shows he has not been deterred by his prior convictions, and a more serious punishment is presently warranted.

Arnold's situation is also aggravated in the sense his crimes have gotten increasingly worse over time. He went from petty theft in 2001 and supervising a prostitute in 2003, to felonious pimping-related conduct in 2004 and the present case. His record of numerous and increasingly dangerous crimes was clearly an aggravated circumstance in this case. (Rule 4.421(b)(2); *People v. Searle* (1989) 213 Cal.App.3d 1091, 1098; *People v. Ramos* (1980) 106 Cal.App.3d 591, 609-610.)

Arnold cites his lack of weaponry or violence and Melissa's willingness to participate in his crimes as mitigating factors in his favor. However, the record shows that Arnold demeaned and degraded Melissa throughout their relationship and that he controlled nearly every aspect of her life. Even when she was ill and wanted to go to the hospital, he was callously demanding and refused to give her the day off. Under these circumstances, there is no reason to disturb the trial court's finding that, to the extent any mitigating factors did exist, they were outweighed by the aggravating factors discussed above. Given the circumstances of Arnold's crimes and his criminal background, we are convinced the trial court acted well within its discretion in sentencing him to the upper term of six years on the pimping count. There is no basis to disturb that ruling on appeal.

II

Although the trial court stayed Arnold's sentence for pandering pursuant to Penal Code section 654, the parties agree the abstract of judgment fails to reflect this fact. Accordingly, we will modify the judgment to correctly reflect the trial court's sentencing decision.

DISPOSITION

The abstract of judgment is modified to reflect Arnold's sentence for pandering (count 2) was stayed under Penal Code section 654. The clerk of the trial court is directed to prepare a corrected abstract of judgment and forward a certified copy to the

Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

BEDSWORTH, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

ARONSON, J.